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11	UNITED STATES	S DISTRICT COURT
12	EASTERN DISTRI	ICT OF CALIFORNIA
13		
14	VERONICA MCLEOD, individually and as successor in interest to decedent, DOLORES	Case No. 2:22-cv-00585-WBS-JDP
15	HERNANDEZ; AMADO HERNANDEZ,	Honorable William B. Shubb
16	individually and as successor in interest to decedent, DOLORES HERNANDEZ; and	Hon. Magistrate Jeremy D. Peterson
17	YSIDRA REGALDO, individually,	DI AINTERES DESDONSE TO
18	Plaintiffs,	PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT
19	vs.	OF UNDISPUTED FACTS AND PLAINTIFFS' STATEMENT OF
20	CITY OF REDDING; GARRETT	DISPUTED FACTS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
21	MAXWELL, an individual; MATTHEW BRUCE, an individual; and DOES 2-10,	DEFENDANTS' MOTION FOR
22	inclusive,	SUMMARY JUDGMENT, OR IN THE ALTERNATIVE SUMMARY
23	Defendants.	ADJUDICATION [F.R.C.P. 56]
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	ıl	2:22-cv-00585-WBS-JDP

PLAINTIFFS' SEPARATE STATEMENT

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF 2 **RECORD**: 3 Pursuant to Local Rule 260, Plaintiffs Veronica McLeod, Amado Hernandez, and Ysidra Regaldo hereby submit their Response to Defendants' Separate Statement of Undisputed Facts and 4 5 Plaintiffs' Statement of Disputed Facts in Support of Plaintiffs' Opposition to Defendants' Motion 6 for Summary Judgment, or in the Alternative Summary Adjudication [F.R.C.P. 56]. 7 8 Respectfully submitted, 9 10 DATED: May 13, 2024 LAW OFFICES OF DALE K. GALIPO 11 LAW OFFICE OF STEWART KATZ 12 13 By/s/ Hang D. Le Dale K. Galipo 14 Stewart Katz Hang D. Le 15 Attorneys for Plaintiffs VERONICA MCLEOD, AMADO HERNANDEZ, and 16 YSIDRA REGALDO 17 18 19 20 21 22 23 24 25 26 27 28

2:22-cv-00585-WBS-JDP

1	T	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u> </u>	CITATION	
3 4	1.	At approximately 6:27 p.m., on December 2, 2020, North State Security guard, Jason Sabular, collect the Shorte. Area Safety.	Undisputed for the purposes of Defendants' summary judgment motion.
5		Schuler, called the Shasta Area Safety Communications Agency ("SHASCOM") to report a woman causing a disturbance at	
6		MOD Pizza, located in the Discovery	
7		Village Shopping Center at 913 Dana Drive in Redding.	
8		Declaration of Chris Smyrnos ("Smyrnos	
9		Decl."), at ¶ 13; Deposition Transcript of Garrett Maxwell (Maxwell Depo) attached	
11		as Exhibit "A" to <i>AP Decl.</i> at p.33:4-10; p.29:3-4	
12	2.	Schuler reported the woman left MOD Pizza and was locked in her grey Toyota	<u>Disputed</u> to the extent that all of these details were communicated to Maxwell and Bruce or
13		Camry (California license plate# 7GZH882), yelling and cursing at	that Maxwell and Bruce were aware of all of these details.
14		everyone.	According to Bruce and Maxwell, they were
15		Smyrnos Decl., at ¶ 13; Deposition Transcript of Garrett Maxwell (Maxwell	responding to a woman using foul language, causing a disturbance at a location, and
16		Depo) attached as Exhibit "A" to AP Decl. at p.33:4-10; p.29:3-4	refusing to leave the area.
17 18		Dect. at p.33.4-10, p.29.3-4	Exhibit 1 ("Ex. 1") to Declaration of Hang D. Le ("Le Decl."), Deposition of Garret
19			Maxwell ("Maxwell Dep.") 25:13-19, 26:3-115; Exhibit 3 ("Ex. 3") to Le Decl.,
20			Deposition of Matthew Bruce ("Bruce Dep.") 9:8-18.
21	3.	Witness, Melody Graham, captured video	Undisputed for the purposes of Defendants'
22		("Incident Video") of the incident giving rise to litigation in this matter with her	summary judgment motion.
23		cellular phone.	
24 25		Smyrnos Decl., at ¶ 12; Deposition Transcript of Melody Graham (Graham	
26		<i>Depo</i>) attached as Exhibit "B" to <i>AP Decl</i> . at p. 37:18-p.29:2	
27	4.	Redding Police Corporal Garrett Maxwell	Undisputed for the purposes of Defendants'
28		and Officer Matthew Bruce, on duty, in full police uniform and marked patrol	summary judgment motion.

1 2 3	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
4	vehicles, responded to the incident reported at the subject location.	
5678	Smyrnos Decl., at ¶ 14; Incident Video, Exhibit "C" to AP Decl.; Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.24:20-24; Deposition Transcript of Matthew Bruce (Bruce Depo) attached as Exhibit "D" to AP Decl. at p.69:15-p.70:1.	
9 10 11 12 13	5. Ofc. Bruce arrived on scene first and located the grey Toyota Camry parked facing south in front of MOD Pizza and determined it was occupied by a female, later identified as Dolores Hernandez. **Bruce Depo** attached as Exhibit "D" to AP Decl.** at p.12:7-21, p.14:15-18.	Undisputed for the purposes of Defendants' summary judgment motion.
14 15 16 17 18 19 20	6. Schuler pointed out Hernandez as the person involved in the disturbance. Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.27:3-17.	Objection. Vague as to who Schuler was communicating with when he pointed out Hernandez as the person involved in the disturbance. Disputed to the extent that this suggests Schuler pointed out Hernandez to Bruce. Bruce did not speak with anyone at the scene before speaking with Hernandez. Ex. 3, Bruce Dep. 14:12-14.
21 22 23 24 25	7. Corporal Maxwell arrived almost immediately after Bruce and spoke with Schuler regarding the incident while standing several feet from Ofc. Bruce and Hernandez's Toyota. Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.27:9-13, p.29:3-21, p.33:4-18; Bruce Depo attached as Exhibit "D" to	Undisputed for the purposes of Defendants' summary judgment motion.
26 27 28	8. Once Cpl. Maxwell had finished speaking with Schuler, he walked closer to the Toyota and Ofc. Bruce, who had	Objection. Compound.

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u>CITATION</u>	
3 4	approached the driver side window of the Toyota in an attempt to speak with	Objection. Vague as to "closer to the Toyota and Ofc. Bruce."
5	Hernandez once Cpl. Maxwell had arrived.	Objection. Vague and confusing as to time in
6	Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.35:23-p.36:6.	regards to "in an attempt to speak with Hernandez once Cpl. Maxwell had arrived."
7		<u>Disputed</u> to the extent that this suggests Bruce
8		only started to attempt to speak with Hernandez after Maxwell moved closer to the
9 10		Toyota and Bruce. Bruce was speaking with Hernandez while Maxwell was speaking with the security guard.
11		Ex. C, Incident Video at 00:23-00:57
12	9. Hernandez had her car running, stereo on	Objection. The cited evidence does not
13	at an extremely high volume, and initially ignored Ofc. Bruce's initial efforts to make	support the allegation that Decedent intentionally ignored Bruce and chose to stare
14	contact with her, choosing instead to stare straight ahead.	straight ahead.
15	Bruce Depo attached as Exhibit "D" to AP	Undisputed that when Bruce initially contacted Decedent, she was not looking at Bruce and
16 17	Decl. at p.16:25-p.17:3-8; p.17:12-25	was looking straightforward and had music playing loudly.
18	10. Eventually, after Bruce shined his	Undisputed for purposes of Defendants'
19	flashlight in her car, Hernandez rolled her window down approximately two inches	Motion for Summary Judgment.
20	and became uncooperative and argumentative with Ofc. Bruce (telling him	
21	that he was a "murderer," and that she did not have to speak with him).	
22	Bruce Depo attached as Exhibit "D" to AP	
23	Decl. at p.15:3-14; p.16:25-p.17:3-8.	
24	11. Ofc. Bruce continued to try to engage her in conversation, telling her they had never	Undisputed for purposes of Defendants' Motion for Summary Judgment.
25	met, that he was not a murderer, and that	1710tion for building Judgmont.
26	he was just trying to figure out what was wrong.	
27		

1	DEFENDANTS! ALLECED	DI AINTHEE? DECDONCE
$1 \parallel$	<u>DEFENDANTS' ALLEGED</u> UNDISPUTED MATERIAL FACT AND	<u>PLAINTIFFS' RESPONSE</u>
2	<u>CITATION</u>	
3 4	Bruce Depo attached as Exhibit "D" to AP Decl. at p.15:3-14.	
5	12. Ofc. Bruce asked Hernandez for her driver's license since her car was running;	Objection. The cited evidence does not support the alleged fact. The cited portion of
6	however, Hernandez refused to provide it and instead told Ofc. Bruce she was not	Bruce's deposition does not state that Bruce asked for Decedent's driver's license because
7 8	driving and did not have to give him "shit."	her car was running.
9	Bruce Depo attached as Exhibit "D" to AP Decl. at p.23:12-20.	Undisputed that Bruce asked for Decedent's driver's license and Decedent told him she
10		wasn't giving him "shit" and that she was not driving.
11	13. Hernandez then put her car in reverse and	Objection. Compound.
12	began to back out of the parking spot (the parking stall on either side of her vehicle	Objection. Vague and confusing as to the "the
13	was open and provided ample room to clear the officers and safely reverse into	parking stall on either side of her vehicle as open and provided ample room to clear the
14	the parking lot lane of traffic had she intended to leave).	officers."
15	Bruce Depo attached as Exhibit "D" to	<u>Disputed</u> that the officers positioning themselves near the vehicle was tactically
16	<i>AP Decl.</i> at p.19:21- p.20:3; p.23:25-24:9; <i>Raudman Video</i> , Exhibit "C" to <i>AP</i>	sound.
17 18	Decl.; Declaration of Rajeev Kelkar, Ph.D. ("Kelkar Decl."), at ¶ 5(d).	The officers' failure to tactically position themselves in a position of cover and away
19		from Decedent's vehicle when it began moving was a poor tactical choice.
20		Declaration of Scott DeFoe ("DeFoe Decl.") ¶ 7.
21	14. The officers began to walk away from her	Disputed.
22	vehicle as they had no desire to detain her and intended on allowing Hernandez to	As the vehicle began to back out, Maxwell
23 24	leave since her departure could end the conflict; however, Hernandez stopped	was moving into the parking lot to get a better vantage point of the parking area.
25	reversing and drove forward, turning her	Ex. 1, Maxwell Dep. 37:7-15, 14-25.
26	vehicle directly at both Bruce and Maxwell.	Maxwell intended to let Decedent leave the
27	Bruce Depo attached as Exhibit "D" to AP Decl. at p.21:23-p.22:9; p.22:22-	shopping plaza and then initiate a traffic stop on Decedent at a later location.
28	p.23:5; 28:13-15; p.29:10-25; p.30:8-17;	

DEFENDANTS! ALLECED	DI AINTIEEC DECLONCE
UNDISPUTED MATERIAL FACT AND	<u>PLAINTIFFS' RESPONSE</u>
<u>CITATION</u>	
58:17-25; Raudman Video, Exhibit "C" to AP Decl.: Deposition Transcript of	Exhibit 2 ("Ex. 2") to Le Decl., Interview of Garret Maxwell ("Maxwell Int.") 9:386-391.
Jennifer Hoberg (J. Hoberg Depo)	The vehicle came to a stop and then moved
29:15-20; Deposition Transcript of Ryan Hoberg (R. Hoberg Depo) attached as	forward as the officers walked alongside the driver's side of the vehicle, before coming to
Exhibit "F" to AP Decl. at p. 20:6-14.	another stop.
	Ex. 3, Bruce Dep. 30:5-7; Ex. C, Incident Video at 01:26-01:28.
	The vehicle did not come close to striking any officer and neither officer was in the pathway of the vehicle when it moved forward.
	Ex. C, Incident Video at 01:26-01:28.
	Neither Bruce nor Maxwell was struck by the
	vehicle.
	Ex. 1, Maxwell Dep. 39:17-21; Ex. 3, Bruce Dep. 30:1-4.
15. Hernandez's vehicle came closer to Bruce,	<u>Disputed</u> .
over) and stepped out of the way as the	The officers' failure to tactically position
	themselves in a position of cover and away from Decedent's vehicle when it began
*	moving was a poor tactical choice.
Raudman Video, Exhibit "C" to AP	DeFoe Decl. ¶ 7.
Dect.	The vehicle came to a stop and then moved forward as the officers walked alongside the
	driver's side of the vehicle, before coming to another stop.
	Ex. 3, Bruce Dep. 30:5-7; Ex. C, Incident
	Video at 01:26-01:28.
	The vehicle did not come close to striking any officer and neither officer was in the pathway
	of the vehicle when it moved forward.
	Ex. C, Incident Video at 01:26-01:28.
	58:17-25; Raudman Video, Exhibit "C" to AP Decl.; Deposition Transcript of Jennifer Hoberg (J. Hoberg Depo) attached as Exhibit "E" to AP Decl. at p. 29:15-20; Deposition Transcript of Ryan Hoberg (R. Hoberg Depo) attached as Exhibit "F" to AP Decl. at p. 20:6-14.

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
	<u>CITATION</u>	
3 4		Neither Bruce nor Maxwell was struck by the vehicle.
5		Ex. 1, Maxwell Dep. 39:17-21; Ex. 3, Bruce Dep. 30:1-4.
6 7 8 9 10	16. Hernandez stopped for a few seconds as she screamed "fuck you" and extended both of her middle fingers. Bruce Depo attached as Exhibit "D" to AP Decl. at p.31:3-17; Raudman Video, Exhibit "C" to AP Decl.	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
11 12	17. Intending to stop the car from moving out of concern for her unsafe driving and for the numerous pedestrians in the area, Ofc.	Objection. Fed. R. Evid. 802—hearsay. The cited portion of Smyrnos's Declaration is hearsay to which there is not exception.
13 14 15 16 17	Bruce pulled out his baton and attempted to break the driver's side window to grab Hernandez's keys, disable the vehicle and attempt to place her under arrest. Bruce Depo attached as Exhibit "D" to AP Decl. at p.31:3-17; p.32:15-p. 33:12; p.33:3-12; 34:20-35:2; Raudman Video, Exhibit "C" to AP Decl.; Smyrnos Decl.,	Objection. The cited evidence to Bruce's Deposition and Raudman Video does not support the allegation that Bruce intended to stop the car from moving out of concern for Decedent's unsafe driving and for the numerous pedestrians in the area. Objection. There are no objective facts to
18	at ¶ 19.	justify Bruce's alleged concern of Decedent's unsafe driving and that she posed a danger to
19		the pedestrians in the area. "[A] simple statement by an officer that he fears for his
20		safety or the safety of others is not enough; there must be objective factors to justify such
21		a concern." <i>Deorle v. Rutherford</i> , 272 F.3d 1272, 1281 (9th Cir. 2001).
22		<u>Disputed</u> .
23		A reasonable officer acting pursuant to
24 25		standard police practices and training would not have believed there was reasonable
26		suspicion to detain or probable cause to arrest
27		Ms. Hernandez at the time Officer Bruce approached the vehicle and began to strike the driver's side window with his baton.
28		

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u>CITATION</u>	
3		DeFoe Decl. ¶ 6.
5		The vehicle did not come close to striking any officer and neither officer was in the pathway
6		of the vehicle when it moved forward.
7		Ex. C, Incident Video at 01:26-01:28.
8		Neither Bruce nor Maxwell was struck by the vehicle.
9 10		Ex. 1, Maxwell Dep. 39:17-21; Ex. 3, Bruce Dep. 30:1-4.
11 12		Bruce's plan was to bash open the driver's side window and pull Decedent out of the
		vehicle.
13 14		Ex. 3, Bruce Dep. 32:15-33:2; Exhibit 4 ("Ex. 4") to Le Decl., Interview of Matthew Bruce 18:792-795.
15		Bruce has never been able to successfully
16		break window while the driver was in the car and the engine was on.
17		Ex. 3, Bruce Dep. 35:12-23.
18		Bruce has never seen an officer successfully
19		smash a window open and stop someone from
20		driving while the vehicle is on, in gear, and the driver is in the vehicle.
21		Ex. 3, Bruce Dep. 57:14-58:4.
22		Bruce's use of the baton to strike the driver's
23 24		side window violated standard police practices and training and unnecessarily escalated the situation.
25		DeFoe Decl. ¶ 9.
26		
27 28		A reasonable officer acting consistent with standard police practices would have acted according to their training regarding how to

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3	CHARLON	1-1-21
4 5		deal will mentally ill persons or persons experiencing a mental crisis and would have attempted to deescalate and utilize proper defusing techniques.
6		DeFoe Decl. ¶ 8.
7	10 771 ' 1 1'1 (1 1 1 1 6 1	"
8	18. The window did not break as a result of the baton strikes.	Undisputed for purposes of Defendants' Motion for Summary Judgment.
9	Bruce Depo attached as Exhibit "D" to AP	
10	Decl. at p.33:3-12; 34:20-35:2.	
	19. Bruce did not inform Hernandez that she	Objection. The cited evidence to Bruce's
11	was under arrest prior to doing so because of how quickly the incident unfolded and	deposition does not support the alleged fact.
12	because her music was turned up, leading him to believe she would not hear him.	Objection. Fed. R. Evid. 802—hearsay. The cited evidence to the Declaration of Captain
13	Bruce Depo attached as Exhibit "D" to AP	Chris Smyrnos is hearsay to which no exception exists.
14	Decl. at p.32:15-33:2; p.36:6-8; Smyrnos	_
15	Decl., at ¶ 19.	<u>Disputed</u> .
16 17		Officers are trained to give a warning, when feasible, prior to using force in order to give the suspect the opportunity to comply and
18		avoid the use of force.
19		DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-10.
20		It was feasible for Bruce to give Decedent
21		commands or warning prior to using his baton
22		to strike the driver's side window but Bruce failed to do so. A reasonable officer acting
23		pursuant to standard police practices and training would have given a warning prior to
24		striking the driver's side window with the baton.
25		
26		DeFoe Decl. ¶ 14.

1	<u>DEFENDANTS' ALLEGED</u> UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	CITATION	
3 4		Bruce never attempted to communicate with Decedent prior to the use of his baton via
5		gestures, commands, or a warning.
6		Ex. 3, Bruce Dep. 36:2-8; 53:14-16.
7		Bruce made the decision to not try to communicate with Decedent prior to the use of his baton.
8		
9		Ex. 3, Bruce Dep. 64:15-20.
10		Bruce claims that the reason why he did not try to give Decedent a command or gesture to let her know he wanted her to stop prior to
12		approaching to stop her window was because he was purely focused on the task at hand.
13		Ex. 3, Bruce Dep. 59:14-18.
14		No one was in the pathway of the vehicle or at
15 16		risk of being struck by the vehicle at the time Bruce approached the vehicle and started striking the driver's side window with his
17		baton.
18		Ex. C, Incident Video at 01:29-01:31.
19		The vehicle briefly stopped before starting to slowly move in reverse at the time Bruce
20		approached the vehicle and started striking the driver's side window with his baton.
21		Ex. C, Incident Video at 01:28-01:31.
22	20. At that point, Hernandez then started to	Disputed.
23	reverse her vehicle (while turning the	
24	steering wheel clockwise) with its wheels turned towards Bruce and made contact	Bruce found himself on the ground and initially did not know what had brought him
25	with Ofc. Bruce's foot, dragging it and his	off his feet.
26	left leg under the vehicle's front, driver's side tire and pulling him to the ground.	Ex. 3, Bruce Dep. 39:21-40:5.
27		

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u>CITATION</u>	
3 4	Bruce Depo attached as Exhibit "D" to AP Decl. at p.40:25-p.41:12; Kelkar Decl., at ¶ 5(j); Smyrnos Decl., at ¶ 21.	After Bruce's third baton strike, the car reversed further, and Bruce fell to the ground near the front left tire.
5		Ex. C, Incident Video at 01:32-01:34.
7	21. The vehicle rolled onto Ofc. Bruce's leg near his left knee and then stopped,	Objection. Fed. R. Evid. 802—hearsay. The cited evidence to the Declaration of Captain
8	pinning him underneath the vehicle and preventing either of his legs from moving.	Chris Smyrnos is hearsay to which no exception exists.
9	Bruce Depo attached as Exhibit "D" to AP	Disputed.
10	Decl. at p.41:8-20; Raudman Video, Exhibit "C" to AP Decl.; Smyrnos Decl., at	After Bruce fell to the ground, the vehicle's
11	¶ 21	front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle.
13		Exhibit 6 ("Ex. 6") to Le Decl., Deposition of Aiden Phillips ("Phillips Dep.") 26:25-27:13;
14		Exhibit 7 ("Ex. 7") to Le Decl., Deposition of Richard Bell ("Bell Dep.") 23:10-25; Ex. C,
15		Incident Video at 01:32-10:39.
16 17		After falling to the ground, Bruce was positioned on all fours, with his arms and legs
18		apart.
		Ex. C, Incident Video at 01:34-01:38.
19	22. Ofc. Bruce felt his left leg being "crushed"	<u>Disputed</u> .
20	and experienced "immense pain" shooting up his leg while Hernandez's vehicle was	After Bruce fell to the ground, the vehicle's
21 22	stopped on top of him, leading him to believe that Hernandez was going to kill	front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle.
23	him.	Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell
24	Bruce Depo attached as Exhibit "D" to AP Decl. at p.46:11-16; p.47:11-23.	Dep. 23:10-25; Ex. C, Incident Video at 01:32-10:39.
25		After falling to the ground, Bruce was
26		positioned on all fours, with his arms and legs apart.
27		Ex. C, Incident Video at 01:34-01:38.
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3	<u></u>	David did not one to be bounded as a second
4		Bruce did not sustain any broken bones or any injury that required surgical intervention as a result of the incident.
5		Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
6		-
7 8		Bruce only sustained abrasions and contusions to his left knee, right knee, and abrasions to his hands
		Exhibit 5 ("Ex. 5") to Le Decl., Photographs
9		taken of Matthew Bruce's injuries at the hospital after the incident ("Bruce Injury Photos").
11		This was not an immediate defense of life
12		situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce
13		was not under the vehicle or in a position
14		where he or Maxwell could be struck by the vehicle.
15		DeFoe Decl. ¶ 10.
16	23. In fear for his life, Ofc. Bruce noticed Cpl.	Disputed.
17	Maxwell running towards his location on the ground and yelled "shoot her"[;]	After Bruce fell to the ground, the vehicle's
18	however, Cpl. Maxwell had drawn his	front left tire did not stop on top of Bruce and
19	firearm once he saw the vehicle on top of Ofc. Bruce.	Bruce was not pinned underneath the vehicle.
20	Bruce Depo attached as Exhibit "D" to	Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell Dep. 23:10-25; Ex. C, Incident Video at
21	AP Decl. at p.45:21-46:10; p.47:11-23;	01:32-10:39.
22	Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.64:13-19.	After falling to the ground, Bruce was
23		positioned on all fours, with his arms and legs apart.
24		Ex. C, Incident Video at 01:34-01:38.
25		Bruce did not sustain any broken bones or any
26		injury that required surgical intervention as a result of the incident.
27		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
3	<u>CITATION</u>	
		Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
5		Bruce only sustained abrasions and contusions to his left knee, right knee, and abrasions to his hands
6		Ex. 5, Bruce Injury Photos.
7		This was not an immediate defense of life
8 9		situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce was not under the vehicle or in a position
10		where he or Maxwell could be struck by the vehicle.
11		DeFoe Decl. ¶ 10.
12		Bruce believed that he was directing Maxwell
13		to shoot the Decedent.
14		Ex. 3, Bruce Dep. 46:17-19.
15 16		The vehicle was not moving when the shooting started.
17		Ex. C, Incident Video at 01:38-01:42.
18	24. Cpl. Maxwell shot into Hernandez's	Objection. Argumentative.
19	vehicle a total of seven times based on his own independent, reasonable and honest	Objection. Fed. R. Evid. 802. The evidence
20	belief that Hernandez posed an imminent and deadly threat to Ofc. Bruce.	from the Smyrnos Declaration is based on hearsay.
21	Bruce Depo attached as Exhibit "D" to	Objection . Fed. R. Evid. 401, 402, 403.
22	AP Decl. at p.47:11-23; Maxwell Depo,	Evidence of the Redding Police Department's
23	attached as Exhibit "A" to <i>AP Decl.</i> at p.60:6-p.61:1; p.62:20-22 p.64:20-23;	findings that Maxwell's use of deadly force was reasonable and justified are irrelevant and
24	Smyrnos Decl., at \P 21	unduly prejudicial. See Tulloss v. Near N. Montessori School, Inc., 776 F.2d 150, 153-54
25		(7th Cir. 1985) (excluding evidence of
26		findings in an internal investigation because it "was tantamount to saying this has already
27		been decided and here is the decision.").

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND <u>CITATION</u>	
3		Objection. Fed. R. Evid. 702. Smyrnos's findings are inappropriate and inadmissible
5		opinions as to his legal conclusion on an ultimate issue of the law. See Hangarter v.
6		Provident Life Acc. Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004); Miller v. Clark Cnty.,
7		340 F.3d 959, 963 n.7 (9th Cir. 2003).
8		<u>Disputed</u> .
9 10		After Bruce fell to the ground, the vehicle's front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle.
11 12		Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell Dep. 23:10-25; Ex. C, Incident Video at
13		01:32-10:39.
14		After falling to the ground, Bruce was positioned on all fours, with his arms and legs
15		apart.
16		Ex. C, Incident Video at 01:34-01:38.
17 18		Bruce did not sustain any broken bones or any injury that required surgical intervention as a result of the incident.
19		Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
20		Bruce only sustained abrasions and contusions
21		to his left knee, right knee, and abrasions to his hands
22		Ex. 5, Bruce Injury Photos.
23		This was not an immediate defense of life
24		situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce
25		was not under the vehicle or in a position
26		where he or Maxwell could be struck by the vehicle.
27		DeFoe Decl. ¶ 10.
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3		A reasonable officer acting consistent with police practices and training, confronted with
5		the facts of this incident, would not have used lethal force in this situation.
6		DeFoe Decl. ¶ 10.
7 8		The vehicle was not moving when the shooting started.
9		Ex. C, Incident Video at 01:38-01:42.
10 11		Maxwell had the impression that his shots were striking Decedent in the car because he could see the initial impact as he began
12		shooting and could see that his continued shots appeared to be striking her.
13		Ex. 1, Maxwell Dep. 65:14-23.
14 15		After the first or second shot, Decedent's head fell forward and landed on the steering wheel.
16 17		Exhibit 8 ("Ex. 8") to Le Decl., Deposition of Jennifer Hoberg ("Hoberg Dep.") 47:9-15, 61:5-17.
18 19		After the first two shots, Decedent's head and upper body moved away from the driver's side and down towards passenger seat area.
20		Ex. C, Incident Video at 01:39-01:40.
21		After the first two shots, the car slowly moved
22 23		forward in a straight line and Bruce moved away from near the front left tire.
24		Ex. C, Incident Video at 01:40-01:42.
25		Bruce was not in the direct pathway of the vehicle when it started to move forward.
26		Ex. 7, Bell Dep. 42:16-23, 44:11-45:5.
27		Бл. 7, вен вер. 42.10-23, 44.11-43.3.

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3 4		The car never attempted to make a turn when it moved forward; it generally moved in a straight direction the entire time.
5		Ex. 7, Bell Dep. 49:3-15; Ex. C, Incident Video at 01:39-01:43.
7		When the car rolled forward, it was moving at approximately 2 miles per hour.
8 9		Ex. 7, Bell Dep. 43:2-44:1; Ex. C, Incident Video at 01:39-01:43.
10 11		Bruce claims he heard two back-to-back shots and then felt the vehicle move off his leg.
12		Ex. 3, Bruce Dep. 67:1-6; Ex. 4, Bruce Int. 23:1010-1021.
13 14		One of the gunshot wounds entered Decedent's left mid-back and had a back to
15 16		front, left to right, and sharply upward trajectory.
17 18		Exhibit 9 ("Ex. 9") to Le Decl., Shasta County Sheriff Autopsy of Dolores Hernandez ("Autopsy") at 2.
19		Another gunshot wound entered the lateral left torso and had a left to right, slightly front to
20 21		back, and sharply upward trajectory. Ex. 9, Autopsy at 2.
22		Officers are trained that shooting at a moving
23		vehicle is rarely effective and the officers should move out of the path of an approaching
24		vehicle instead of discharging their firearm at the vehicle or any of its occupants.
2526		DeFoe Decl. ¶ 11; Ex. 1, Maxwell Dep. 70:14-71:1, 71:5-23, 72:12-18.
27		Officers are taught that if a driver is wounded or killed while operating a motor vehicle, it
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
	<u>CITATION</u>	
3 4		could cause the driver to lose control of the vehicle, making it more dangerous for those around the vehicle.
5		DeFoe Decl. ¶ 11.
6		"
7		Officers are trained that lethal force must be a last resort and used only in the direct of circumstances. Officers are further trained that
8 9		they must show a reverence for human life and to consider other reasonable measures
10		available prior to using lethal force.
11		DeFoe Decl. ¶ 12.
12		Maxwell had other reasonable measures available to him at the time he used lethal
13		force, including but not limited to issuing commands and warnings and moving to a
14		position of cover.
15		DeFoe Decl. ¶ 12.
16		Officers are trained that they are responsible
17		for justifying every shot. Officers are also trained that subjective fear is insufficient to
18		justify the use of lethal force and that an overreaction in using force is excessive force.
19		DeFoe Decl. ¶ 13; Ex. 1, Maxwell Dep. 76:11-
20		13.
21		The number of shots by Maxwell violated
22		standard police practices and training as it was clear to Maxwell that his initial shots struck
23		Decedent, Decedent was incapacitated by the
24		initial shots, and Bruce was able to move away from the vehicle after the initial two shots.
25		DeFoe Decl. ¶ 13.
26		Officers are trained to give a warning, when
27		feasible, prior to using force in order to give
- /		

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3 4		the suspect the opportunity to comply and avoid the use of force.
5		DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-10.
6		
7		It was feasible for Maxwell to provide commands and a warning prior to his use of lethal force but failed to do so.
8		
9		DeFoe Decl. ¶ 14.
10 11		There was a gap of time from when Maxwell drew his firearm to when he engaged his firearm during which Maxwell assessed the
12		situation.
13		Ex. 2, Maxwell Int. 13:598-600.
14		According to Maxwell, approximately three to
15		five seconds passed between the time Maxwell got to the car window and when he began shooting.
16		
17		Ex. 2, Maxwell Int. 14:612-618.
18		A reasonable officer acting pursuant to standard police practices and training would
19		have given a warning prior to striking the driver's side window with a baton and prior
20		using deadly force under the circumstances of
21		this incident.
22		DeFoe Decl. ¶ 14.
23		The Redding Police Department Policy 300.4.1 advises officers that an officer should
24		only discharge a firearm at a moving vehicle
25		or its occupants when the officer reasonably believes there are no other reasonable means
26		available to avert the imminent threat of the vehicle or if deadly force other than the
27		vehicle is directed at the officer or others.
28		

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u>CITATION</u>	
3		Ex. 1, Maxwell Dep. 80:24-81:6.
5		Maxwell never saw Decedent in the car with a gun or pointing a gun at Maxwell.
6		Ex. 1, Maxwell Dep. 81:7-10.
7	25. Ofc. Bruce correctly believed that he	Objection. Argumentative.
8	would have been run over again if Cpl. Maxwell had not fired his shots to	Objection. There are no objective facts to
9	eliminate the threat Hernandez posed, as Hernandez's vehicle would have run over	justify Bruce's alleged belief that Bruce's body and head would have been run over if the
10	Ofc. Bruce's head and body had it been driven forward with counterclockwise	car had driven forward with counterclockwise steering. "[A] simple statement by an officer
11	steering (posing a potential for serious and potentially fatal injury to Ofc. Bruce).	that he fears for his safety or the safety of others is not enough; there must be objective
12	Bruce Depo attached as Exhibit "D" to AP	factors to justify such a concern." <i>Deorle v. Rutherford</i> , 272 F.3d 1272, 1281 (9th Cir.
13	Decl. at p.67:12-21; Maxwell Depo,	2001).
14	attached as Exhibit "A" to <i>AP Decl.</i> at p.60:6-61:1; 67:15-21; <i>Kelkar Decl.</i> , at ¶	<u>Disputed</u> .
15 16	5(m).	Bruce found himself on the ground and initially did not know what had brought him off his feet.
17		
18		Ex. 3, Bruce Dep. 39:21-40:5.
19 20		After falling to the ground, Bruce was positioned on all fours, with his arms and legs apart.
21		Ex. C, Incident Video at 01:34-01:38.
22		Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell
23		Dep. 23:10-25; Ex. C, Incident Video at 01:32-10:39.
24		Ex. 3, Bruce Dep. 45:21-23.
25		The vehicle was not moving when the
26		shooting started.
27		Ex. C, Incident Video at 01:38-01:42.
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
3	<u>CITATION</u>	
4		After the first two shots, the car slowly moved forward in a straight line and Bruce moved away from near the front left tire.
5		Ex. C, Incident Video at 01:40-01:42
6		
7		Bruce was not in the direct pathway of the vehicle when it started to move forward.
8		Ex. 7, Bell Dep. 42:16-23, 44:11-45:5.
9		The car never attempted to make a turn when it moved forward; it generally moved in a straight direction the entire time.
11		Ex. 7, Bell Dep. 49:3-15; Ex. C, Incident
12		Video at 01:39-01:43.
13		When the car rolled forward, it was moving at approximately 2 miles per hour.
14		Ex. 7, Bell Dep. 43:2-44:1; Ex. C, Incident
15		Video at 01:39-01:43.
16	26. Cpl. Maxwell did not believe it was	Objection. Compound.
17	feasible to provide a verbal warning to Hernandez prior to firing his weapon; nor	Disputed.
18	did Ofc. Bruce or Cpl. Maxwell have time	
19	to create a tactical plan because of how quickly the incident transpired.	Maxwell never said anything to Decedent, including any commands to stop or a warning
20		that he was going to shoot, prior to the shooting.
21	<i>Bruce Depo</i> attached as Exhibit "D" to <i>AP Decl.</i> at p. 47:11-p.48:3, 55:15-21;	
22	Maxwell Depo, attached as Exhibit "A" to AP Decl. at p.48:13-15, 63:12-15;	Ex. 1, Maxwell Dep. 16:19-17:6, 17:17-21, 63:12-15.
23	Smyrnos Decl., at ¶ 21.	There was a gap of time from when Maxwell
24		drew his firearm to when he engaged his firearm during which Maxwell assessed the
25		situation.
26		Ex. 2, Maxwell Int. 13:598-600
27		According to Maxwell, approximately three to
28		five seconds passed between the time Maxwell

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3		got to the car window and when he began shooting.
4		Ex. 2, Maxwell Int. 14:612-618.
5		
6		Officers are trained to give a warning, when feasible, prior to using force in order to give
7 8		the suspect the opportunity to comply and avoid the use of force.
9		DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-10.
10 11 12		It was feasible for Maxwell to provide commands and a warning prior to his use of lethal force but failed to do so.
13		DeFoe Decl. ¶ 14.
14		A reasonable officer acting pursuant to
15		standard police practices and training would have given a warning prior to using deadly
16		force under the circumstances of this incident.
17		DeFoe Decl. ¶ 14.
18		The officers failed to formulate a tactical plan prior to their initial approach Decedent and
19		prior to approaching Decedent to detain her.
20		DeFoe Decl. ¶ 7.
21		The poor tactical choices and errors made by
22		the officers during this incident include failing to recognize that Decedent may have a mental
23		illness and responding appropriately pursuant to their training, failing to tactically position
24		themselves in a position of cover and away from Decedent's vehicle when it began
25		moving, failing to communicate with each
26		other during the incident, positioning themselves near or in the pathway of a moving
27		vehicle despite anticipating that the vehicle would continue to move, unnecessarily
28		escalating the situation by using force without

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
$\frac{1}{2}$	UNDISPUTED MATERIAL FACT AND	TEATH VILLE AND STADE
3	<u>CITATION</u>	
4		attempting to communicate, give commands, or give warnings, and not being aware of where their partner was during the incident.
5		DeFoe Decl. ¶ 7.
6		
7	27. At approximately 6:36:42 p.m. on December 2, 2020, Corporal Maxwell	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
8	advised over the radio that shots had been fired and one subject was down and	
9	requested "Code 3" medical to respond.	
10	Smyrnos Decl., at ¶ 15; Maxwell Audio	
11	Clip attached as Exhibit "H" to AP Decl.	
12	28. Corporal Maxwell evaluated Hernandez, who appeared to be obviously deceased	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
13	since she was motionless, not breathing, had significant trauma on the left side of	Janes
14	her body from gunshot wounds, and had no	
15	pulse.	
16	Smyrnos Decl., at ¶ 15; Maxwell Depo, attached as Exhibit "A" to AP Decl. at	
17	p.66:6-24.	
18	29. Per Redding Police Department Policy, the Department conducted an internal	Objection. Fed. R. Evid. 401, 402—relevance.
19	investigation into the officer involved	Undisputed for the purposes of Defendants'
20	shooting incident.	Motion for Summary Judgment.
$_{21}$	Smyrnos Decl., at ¶ 16.	
22	30. The Department found that Ofc. Bruce	Objection. Fed. R. Evid. 401, 402, 403—
23	believed Hernandez intentionally drove directly at him (assault with a deadly	relevance and unduly prejudicial. See Tulloss v. Near N. Montessori School, Inc., 776 F.2d
24	weapon) and attempted to use his baton to break the vehicle's window to detain and	150, 153-54 (7th Cir. 1985) (excluding evidence of findings in an internal
25	arrest her.	investigation because it "was tantamount to saying this has already been decided and here
26	Smyrnos Decl., at ¶ 19.	is the decision.").
27		Objection. Fed. R. Evid. 702. The
28		Department's findings are inappropriate and inadmissible opinions as to its legal conclusion

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1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3 4		on an ultimate issue of the law. See Hangarter v. Provident Life Acc. Ins. Co., 373 F.3d 998,
5		1016 (9th Cir. 2004); <i>Miller v. Clark Cnty.</i> , 340 F.3d 959, 963 n.7 (9th Cir. 2003).
6		<u>Disputed</u> that it was reasonable for Bruce to believe that Decedent intentionally drove
7 8		directly at him and that his use of the baton was reasonable.
9		The vehicle came to a stop and then moved
10		forward as the officers walked alongside the driver's side of the vehicle, before coming to another stop.
11 12		Ex. 3, Bruce Dep. 30:5-7; Ex. C, Incident Video at 01:26-01:28.
13		The officers failed to tactically position
14 15		themselves in a position of cover and away from Decedent's vehicle when it began moving.
16		DeFoe Decl. ¶ 7.
17		The vehicle did not come close to striking any
18		officer and neither officer was in the pathway of the vehicle when it moved forward.
19		Ex. C, Incident Video at 01:26-01:28.
20 21		Neither Bruce nor Maxwell was struck by the vehicle.
22		Ex. 1, Maxwell Dep. 39:17-21; Ex. 3, Bruce
23		Dep. 30:1-4.
24		Bruce did not give the Decedent any commands or any warning that he was going
25		strike her window with his baton prior to striking the window.
26		Ex. 3, Bruce Dep. 36:2-8.
27		

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3		Bruce never made any gestures with his hands in an attempt to communicate with Decedent
4		that he wanted her to stop.
5		Ex. 3, Bruce Dep. 53:14-16.
7		Bruce made the decision to not give any commands or gestures prior to approaching to
8		smash the window.
9		Ex. 3, Bruce Dep. 64:15-20.
10 11		Bruce claims that the reason why he did not try to give Decedent a command or gesture to let her know he wanted her to stop prior to
12		approaching to stop her window was because he was purely focused on the task at hand.
13		Ex. 3, Bruce Dep. 59:14-18.
14 15		Bruce has never been able to successfully break window while the driver was in the car
16		and the engine was on.
17		Ex. 3, Bruce Dep. 35:12-23.
18		Bruce has never seen an officer successfully smash a window open and stop someone from
19		driving while the vehicle is on, in gear, and the driver is in the vehicle.
20		Ex. 3, Bruce Dep. 57:14-58:4.
21		Bruce anticipated that the vehicle was going to
22 23		move while he was smashing the window.
24		Ex. 3, Bruce Dep. 53:25-54:5.
25		Bruce concedes that if he had not gone up to smash the vehicle's window, he would not have been in the position to end up where he
26		did on the ground.
27		Ex. 3, Bruce Dep. 52:14-24
28		

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	CITATION	
3		Based on the circumstances of this incident, a reasonable police office acting consistent with
5		standard police practices and training would have initially determined that Decedent was
6		mentally ill or experiencing a mental health crisis.
7		DeFoe Decl. ¶ 5.
8		A reasonable officer acting consistent with
9		standard police practices would have acted according to their training regarding how to deal will mentally ill persons or persons
11		experiencing a mental crisis and would have attempted to deescalate and utilize proper defusing techniques.
12		
13		DeFoe Decl. ¶ 8.
14		Bruce's use of the baton to strike the driver's side window violated standard police practices
15		and training and unnecessarily escalated the situation.
16		
17		DeFoe Decl. ¶ 9.
18	31. Moreover, the Department found Cpl. Maxwell's use of deadly force was	Objection. Fed. R. Evid. 401, 402, 403—relevance and unduly prejudicial. <i>See Tulloss</i>
19	reasonable and justified to stop	v. Near N. Montessori School, Inc., 776 F.2d
20	Hernandez's immediate threat of death or serious bodily injury to Officer Bruce and	150, 153-54 (7th Cir. 1985) (excluding evidence of findings in an internal
21	the ongoing threat to the public if she were	investigation because it "was tantamount to
22	to escape (and thus lawful and within Department policy).	saying this has already been decided and here is the decision.").
23	Smyrnos Decl., at ¶ 21.	Objection. Fed. R. Evid. 702. The
24		Department's findings are inappropriate and inadmissible opinions as to its legal conclusion
25		on an ultimate issue of the law. See Hangarter v. Provident Life Acc. Ins. Co., 373 F.3d 998,
26		1016 (9th Cir. 2004); <i>Miller v. Clark Cnty.</i> , 340 F.3d 959, 963 n.7 (9th Cir. 2003).
27		Disputed that Maxwell's just of deadly force
28		was reasonable and justified and that Decedent

1	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	<u>CITATION</u>	
3 4		posed an immediate threat of death or serios bodily injury to Bruce or the general public at the time of the shooting.
5		After Bruce fell to the ground, the vehicle's
6 7		front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle.
8 9		Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell Dep. 23:10-25; Ex. C, Incident Video at 01:32-10:39.
10 11		After falling to the ground, Bruce was positioned on all fours, with his arms and legs apart.
12		Ex. C, Incident Video at 01:34-01:38.
13		Bruce did not sustain any broken bones or any injury that required surgical intervention as a
14		result of the incident.
15		Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
16 17		Bruce only sustained abrasions and contusions to his left knee, right knee, and abrasions to his
18		hands
19		Ex. 5, Photographs taken of Matthew Bruce's injuries at the hospital after the incident.
20		This was not an immediate defense of life
21		situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce
22		was not under the vehicle or in a position where he or Maxwell could be struck by the
23		vehicle.
24		DeFoe Decl. ¶ 10.
25		A reasonable officer acting consistent with
26		police practices and training, confronted with the facts of this incident, would not have used
27		lethal force in this situation.
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
3	<u>CITATION</u>	
		DeFoe Decl. ¶ 10.
5		The vehicle was not moving when the shooting started.
6		Ex. C, Incident Video at 01:38-01:42.
7		Maxwell had the impression that his shots
8		were striking Decedent in the car because he could see the initial impact as he began shooting and could see that his continued shots
10		appeared to be striking her.
		Ex. 1, Maxwell Dep. 65:14-23.
11 12		After the first or second shot, Decedent's head fell forward and landed on the steering wheel.
13		Ex. 8, Hoberg Dep. 47:9-15, 61:5-17.
14		After the first two shots, Decedent's head and
15		upper body moved away from the driver's side and down towards passenger seat area.
16 17		Ex. C, Incident Video at 01:39-01:40.
18		After the first two shots, the car slowly moved forward in a straight line and Bruce moved
19		away from near the front left tire.
20		Ex. C, Incident Video at 01:40-01:42.
21		Bruce was not in the direct pathway of the
22		vehicle when it started to move forward.
23		Ex. 7, Bell Dep. 42:16-23, 44:11-45:5.
24		The car never attempted to make a turn when it moved forward; it generally moved in a
25		straight direction the entire time.
26		Ex. 7, Bell Dep. 49:3-15; Ex. C, Incident Video at 01:39-01:43.
27		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3 4		When the car rolled forward, it was moving at approximately 2 miles per hour.
5		Ex. 7, Bell Dep. 43:2-44:1; Ex. C, Incident Video at 01:39-01:43.
6 7		Bruce claims he heard two back-to-back shots and then felt the vehicle move off his leg.
8		Ex. 3, Bruce Dep. 67:1-6; Ex. 4, Bruce Int. 23:1010-1021.
9 10		One of the gunshot wounds entered
11		Decedent's left mid-back and had a back to front, left to right, and sharply upward trajectory.
12 13		Ex. 9, Autopsy at 2.
14		Another gunshot wound entered the lateral left torso and had a left to right, slightly front to
15		back, and sharply upward trajectory.
16		Ex. 9, Autopsy at 2.
17 18		Officers are trained that shooting at a moving vehicle is rarely effective and the officers should move out of the path of an approaching
19		vehicle instead of discharging their firearm at the vehicle or any of its occupants.
20 21		DeFoe Decl. ¶ 11; Ex. 1, Maxwell Dep. 70:14-71:1, 71:5-23, 72:12-18.
22		
23		Officers are taught that if a driver is wounded or killed while operating a motor vehicle, it could cause the driver to lose control of the
24		vehicle, making it more dangerous for those around the vehicle.
25		DeFoe Decl. ¶ 11.
26		Officers are trained that lethal force must be a
27 28		last resort and used only in the direct of circumstances. Officers are further trained that

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3		they must show a reverence for human life and
4		to consider other reasonable measures available prior to using lethal force.
5		DeFoe Decl. ¶ 12.
6		Maxwell had other reasonable measures
7		available to him at the time he used lethal force, including but not limited to issuing
8		commands and warnings and moving to a
9		position of cover.
10		DeFoe Decl. ¶ 12.
11		Officers are trained that they are responsible
12		for justifying every shot. Officers are also trained that subjective fear is insufficient to
13		justify the use of lethal force and that an overreaction in using force is excessive force.
14		
15		DeFoe Decl. ¶ 13; Ex. 1, Maxwell Dep. 76:11- 13.
16		The number of shots by Maxwell violated
17		standard police practices and training as it was clear to Maxwell that his initial shots struck
18		Decedent, Decedent was incapacitated by the
19		initial shots, and Bruce was able to move away from the vehicle after the initial two shots.
20		DeFoe Decl. ¶ 13.
21		Officers are trained to give a warning, when
22		feasible, prior to using force in order to give the suspect the opportunity to comply and
23		avoid the use of force.
24		DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-
25		10.
26		It was feasible for Maxwell to provide commands and a warning prior to his use of
27		lethal force but failed to do so.
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1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND CITATION	
3		DeFoe Decl. ¶ 14.
4		There was a gap of time from when Maxwell
5 6		drew his firearm to when he engaged his firearm during which Maxwell assessed the situation.
7		Ex. 2, Maxwell Int. 13:598-600.
8		According to Maxwell, approximately three to
9 10		five seconds passed between the time Maxwell got to the car window and when he began shooting.
11		Ex. 2, Maxwell Int. 14:612-618.
12		A reasonable officer acting pursuant to
13		standard police practices and training would have given a warning prior to striking the
14		driver's side window with a baton and prior using deadly force under the circumstances of
15		this incident.
16		DeFoe Decl. ¶ 14.
17		The Redding Police Department Policy 300.4.1 advises officers that an officer should
18 19		only discharge a firearm at a moving vehicle or its occupants when the officer reasonably
20		believes there are no other reasonable means available to avert the imminent threat of the
21		vehicle or if deadly force other than the vehicle is directed at the officer or others.
22		Ex. 1, Maxwell Dep. 80:24-81:6.
23		Maxwell never saw Decedent in the car with a
24		gun or pointing a gun at Maxwell.
25		Ex. 1, Maxwell Dep. 81:7-10.
26	32. As part of the Department's policies, the	Objection. Fed. R. Evid. 401, 402, 403—
27	Department adheres to Cal. Pen. Code §832.5	relevance, unduly prejudicial.
28		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3 4	Smyrnos Decl., at ¶ 5.	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
5 6 7 8	33. At the time of the shooting, Redding Police Department observed and trained to the standards set by the State of California Commission on Peace Officer Standards and Training ("POST"). Smyrnos Decl., at ¶ 6.	Objection. Fed. R. Evid. 401, 402—relevance. Undisputed for the purposes of Defendants' Motion for Summary Judgment.
9 10 11 12 13	34. POST is a state-wide, governmental organization (created by State of California Legislature) composed of law enforcement executives and advisors tasked with setting minimum selection and training standards for California law enforcement.	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
14 15	Smyrnos Decl., at ¶ 6. 35. The Department's update training is consistent with POST mandates.	Objection. Fed. R. Evid. 401, 402—relevance.
16	Smyrnos Decl., at \P 7.	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
17 18 19	36. In order to be in compliance with POST standards, the Department submits its training courses and policies to regular audits by POST.	Objection. Fed. R. Evid. 401, 402—relevance. Undisputed for the purposes of Defendants' Motion for Summary Judgment.
20	Smyrnos Decl., at \P 8.	
21 22 23 24 25	37. At the time of the incident, Cpl. Maxwell and Ofc. Bruce attended and successfully completed the POST-certified police academy prior to being hired by the Department, successfully passed their FTO training, and were up to date with all mandated POST training requirements	Objection. Fed. R. Evid. 401, 402—relevance. Undisputed for the purposes of Defendants' Motion for Summary Judgment.
26 27 28	Smyrnos Decl., at ¶ 9. 38. Only approximately 19.7 seconds elapsed between the moment Hernandez's vehicle first moved (reversed out of the parking	Objection. Fed. R. Evid. 401, 402—relevance.

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1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3 4 5 6	space) and the moment Cpl. Maxwell drew his weapon. Raudman Video, Exhibit "C" to AP Decl.; Kelkar Report, attached as Exhibit "B" to Kelkar Decl., at p. 41 ("Video Log").	Undisputed for the purposes of Defendants' Motion for Summary Judgment.
7 8 9 10 11 12 13 14 15 16 17 18 19 20	39. Cpl. Maxwell was forced to fire his first shot just one second after drawing his gun. **Raudman Video*, Exhibit "C" to AP Decl.; Kelkar Report*, attached as Exhibit "B" to Kelkar Decl.*, at p. 41 ("Video Log").	Objection. Argumentative. Objection. Vague as to "forced to fire." Disputed. After Bruce fell to the ground, the vehicle's front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle. Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell Dep. 23:10-25; Ex. C, Incident Video at 01:32-10:39. After falling to the ground, Bruce was positioned on all fours, with his arms and legs apart. Ex. C, Incident Video at 01:34-01:38. Bruce did not sustain any broken bones or any injury that required surgical intervention as a result of the incident. Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
21 22 23		Bruce only sustained abrasions and contusions to his left knee, right knee, and abrasions to his hands
24		Ex. 5, Photographs taken of Matthew Bruce's injuries at the hospital after the incident.
252627		This was not an immediate defense of life situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce was not under the vehicle or in a position

1	DEFENDANTS' ALLEGED	PLAINTIFFS' RESPONSE
2	UNDISPUTED MATERIAL FACT AND <u>CITATION</u>	
3		where he or Maxwell could be struck by the vehicle.
4		DeFoe Decl. ¶ 10.
5		A reasonable officer acting consistent with
7		police practices and training, confronted with the facts of this incident, would not have used lethal force in this situation.
8		
9		DeFoe Decl. ¶ 10.
10		Maxwell had the impression that his shots were striking Decedent in the car because he
12		could see the initial impact as he began shooting and could see that his continued shots appeared to be striking her.
13		Ex. 1, Maxwell Dep. 65:14-23.
14		After the first or second shot, Decedent's head
15		fell forward and landed on the steering wheel.
16		Ex. 8, Hoberg Dep. 47:9-15, 61:5-17.
17		After the first two shots, Decedent's head and
18		upper body moved away from the driver's side and down towards passenger seat area.
19		Ex. C, Incident Video at 01:39-01:40.
20		After the first two shots, the car slowly moved
21		forward in a straight line and Bruce moved away from near the front left tire.
22		Ex. C, Incident Video at 01:40-01:42.
23		
24		Bruce was not in the direct pathway of the vehicle when it started to move forward.
25		Ex. 7, Bell Dep. 42:16-23, 44:11-45:5; Ex. C,
26		Incident Video at 01:39-01:43.
27		

DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
<u>CITATION</u>	
	The car never attempted to make a turn when it moved forward; it generally moved in a straight direction the entire time.
	Ex. 7, Bell Dep. 49:3-15; Ex. C, Incident Video at 01:39-01:43.
	When the car rolled forward, it was moving at approximately 2 miles per hour.
	Ex. 7, Bell Dep. 43:2-44:1; Ex. C, Incident Video at 01:39-01:43.
	Bruce claims he heard two back-to-back shots and then felt the vehicle move off his leg.
	Ex. 3, Bruce Dep. 67:1-6; Ex. 4, Bruce Int. 23:1010-1021.
	One of the gunshot wounds entered Decedent's left mid-back and had a back to front, left to right, and sharply upward
	trajectory.
	Ex. 9, Autopsy at 2.
	Another gunshot wound entered the lateral left torso and had a left to right, slightly front to back, and sharply upward trajectory.
	Ex. 9, Autopsy at 2.
	Officers are trained that shooting at a moving
	vehicle is rarely effective and the officers should move out of the path of an approaching
	vehicle instead of discharging their firearm at the vehicle or any of its occupants.
	DeFoe Decl. ¶ 11; Ex. 1, Maxwell Dep. 70:14-71:1, 71:5-23, 72:12-18.
	Officers are taught that if a driver is wounded or killed while operating a motor vehicle, it could cause the driver to lose control of the
	UNDISPUTED MATERIAL FACT AND

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
	<u>CITATION</u>	
3 4		vehicle, making it more dangerous for those around the vehicle.
5		DeFoe Decl. ¶ 11.
6		Officers are trained that lethal force must be a
7		last resort and used only in the direct of circumstances. Officers are further trained that
8		they must show a reverence for human life and to consider other reasonable measures
9		available prior to using lethal force.
10		DeFoe Decl. ¶ 12.
11		Maxwell had other reasonable measures
12		available to him at the time he used lethal force, including but not limited to issuing
13		commands and warnings and moving to a position of cover.
14		DeFoe Decl. ¶ 12.
15		Officers are trained that they are responsible
16		for justifying every shot. Officers are also
17		trained that subjective fear is insufficient to justify the use of lethal force and that an
18		overreaction in using force is excessive force.
19		DeFoe Decl. ¶ 13; Ex. 1, Maxwell Dep. 76:11-13.
20		The number of shots by Maxwell violated
21		standard police practices and training as it was
22		clear to Maxwell that his initial shots struck Decedent, Decedent was incapacitated by the
23		initial shots, and Bruce was able to move away from the vehicle after the initial two shots.
24		DeFoe Decl. ¶ 13.
25		Officers are trained to give a warning, when
26		feasible, prior to using force in order to give
27		the suspect the opportunity to comply and avoid the use of force.
28		

1	<u>DEFENDANTS' ALLEGED</u> UNDISPUTED MATERIAL FACT AND	PLAINTIFFS' RESPONSE
2	CITATION	
3 4		DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-10.
5		It was feasible for Maxwell to provide
6		commands and a warning prior to his use of lethal force but failed to do so.
7		DeFoe Decl. ¶ 14.
8		There was a gap of time from when Maxwell drew his firearm to when he engaged his
10		firearm during which Maxwell assessed the situation.
11		Ex. 2, Maxwell Int. 13:598-600.
12 13		According to Maxwell, approximately three to five seconds passed between the time Maxwell
14		got to the car window and when he began shooting.
15		Ex. 2, Maxwell Int. 14:612-618.
16		A reasonable officer acting pursuant to standard police practices and training would
17		have given a warning prior to striking the
18		driver's side window with a baton and prior using deadly force under the circumstances of
19		this incident.
20		DeFoe Decl. ¶ 14.
21		The Redding Police Department Policy 300.4.1 advises officers that an officer should
22 23		only discharge a firearm at a moving vehicle or its occupants when the officer reasonably
24		believes there are no other reasonable means available to avert the imminent threat of the
25		vehicle or if deadly force other than the vehicle is directed at the officer or others.
26		Ex. 1, Maxwell Dep. 80:24-81:6.
27		

1 2	DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT AND CITATION	PLAINTIFFS' RESPONSE
3 4		Maxwell never saw Decedent in the car with a gun or pointing a gun at Maxwell.
5		Ex. 1, Maxwell Dep. 81:7-10.
6		

PLAINTIFFS' ADDITIONAL MATERIAL FACTS

7

8 9	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
10	Bruce and Maxwell Respond to a Call Regarding a General Disturbance and Bruce Makes Contact with Decedent	
11		_
12	40. Bruce and Maxwell responded to a general disturbance call regarding a	Ex. 1, Maxwell Dep. 25:13-19, 26:3-15; Ex. 3, Bruce Dep. 9:8-18
	woman using foul language, causing a	3, Diuce Dep. 7.0-10
13	disturbance at a location, and refusing to	
14	leave the area.	
15	41. When Bruce responded to the call, he did not have any information that anyone had	Ex. 3, Bruce Dep. 9:19-10:1.
16	been verbally threatened, that anyone had been injured, or that any weapon had been	
17	involved.	
18	42. Bruce did not speak with anyone at the	Ex. 3, Bruce Dep. 14:12-14.
19	scene before speaking with Decedent.	
20	43. Bruce was aware that Maxwell had arrived shortly behind him.	Ex. 3, Bruce Dep. 14:15-18.
21	44. Bruce waited for Maxwell to make their	Ex. 3, Bruce Dep. 14:19-22.
22	approach but did not have a conversation	Ex. 3, Blace Bep. 11.13 22.
23	with Maxwell prior to approaching Decedent.	
24	45. When Bruce initially contacted Decedent	Ex. 3, Bruce Dep. 16:25-17:3; Ex. C, Incident
25	in her vehicle, the vehicle's window was all the way up.	Video at 00:00-00:08.
26	46. When Maxwell arrived on scene, he made	Ex. 1, Maxwell Dep. 33:4-10; Ex. C, Incident
27	contact with a security guard who informed him that the Decedent had	Video at 00:10-00:22.
28		

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1	PLAINTIFFS' ADDITIONAL	SUPPORTING EVIDENCE
2	MATERIAL FACTS	
3	caused a disturbance inside the Mod Pizza business and claims she had been	
4	belligerent.	
5	47. In order to get Decedent's attention, Bruce knocked on Decedent's window three	Ex. 3, Bruce Dep. 17:4-8; Ex. 4, Bruce Int. 9:368-377.
6	times then shined his flashlight into her car, to which Decedent lowered her	
7	window a few inches.	
8	48. Bruce did not recognize Decedent and had	Ex. 4, Bruce Int. 8:337-352.
9	never had contact with Decedent prior to the incident.	
10 11	49. Bruce did not see any weapons inside the car.	Ex. 3, Bruce Dep. 25:9-11.
12	50. Bruce knew something was not right with	Ex. 4, Bruce Int. 11:459-464.
13	Decedent and that she was not in her right mind due to her statements to him.	
14 15	51. As Bruce spoke with Decedent, he could tell that he was agitating her.	Ex. 4, Bruce Int. 11:468-472.
161718	52. Bruce knew that something was not right with Decedent and was starting to build on suspicions of a possible mental health problem.	Ex. 4, Bruce Int. 12:529-531.
19	53. After Decedent accused Bruce of being a	Ex. 4, Bruce Int. 13:551-553.
20	murderer, Bruce claims started to become more aware that Decedent was not safe.	
21	54. Decedent did not make any verbal threats	Ex. 3, Bruce Dep. 24:17-25.
22	to Bruce during their conversation.	
23	55. Bruce was not able to assess whether Decedent was under the influence of drugs	Ex. 3, Bruce Dep. 27:12-16.
24	or alcohol.	
25	56. Maxwell did not complete his discussion with the security guard because he claims	Ex. 1, Maxwell Dep. 27:18-28:7.
26 27	that while he was speaking with the security guard, he noticed that the	
28	Decedent was angry and cursing at Bruce.	
20		

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1 2	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
3 4	57. Maxwell moved off the sidewalk and positioned himself near Bruce as Bruce continued to speak with Decedent.	Ex. 1, Maxwell Dep. 35:23-36:6; Ex. C, Incident Video at 00:58-01:09.
5 6	58. In response to Bruce's request to see Decedent's license, Decedent refused and began to reverse her vehicle.	Ex. 3, Bruce Dep. 24:2-7.
7	Decedent Attempts to Lo	eave the Shopping Plaza
8 9 10	59. When Decedent started backing up the vehicle, Bruce waved to her and told her that she was now driving.	Ex. 3, Bruce Dep. 23:19-20. 24:6-9.
11 12 13 14	60. When Decedent began to back up, Bruce believed that Decedent was free to leave because he did not have enough to detain or arrest Decedent and intended to go look for Maxwell and talk to him about what had occurred.	Ex. 3, Bruce Dep. 22:25-23:5; Ex. 4, Bruce Int. 25:1084-1094
15 16	61. At the time Decedent started to back up her vehicle, Bruce had no intention of arresting Decedent and was going to let her go.	Ex. 3, Bruce Dep. 22:3-9.
17 18 19	62. The reason Bruce intended to let Decedent go was because he did not have enough to determine if she was something more than just crazy and being crazy is not a crime.	Ex. 4, Bruce Int. 13:570-581.
20 21	63. As the vehicle began to back out, Maxwell was moving into the parking lot to get a better vantage point of the parking area.	Ex. 1, Maxwell Dep. 37:14-25.
22 23 24	64. Maxwell intended to let Decedent leave the shopping plaza and then initiate a traffic stop on Decedent at a later location.	Ex. 2, Maxwell Int. 9:386-391.
25 26 27	65. Bruce did not know where Maxwell was at the time Decedent put her vehicle in reverse and intended to go look for Maxwell.	Ex. 3, Bruce Dep. 22:19-23:5.

1	PLAINTIFFS' ADDITIONAL	SUPPORTING EVIDENCE
	MATERIAL FACTS	SOIT ORTHVO EVIDENCE
2	66. The vehicle came to a stop and then	Ex. 3, Bruce Dep. 30:5-7; Ex. C, Incident
3	moved forward as the officers walked	Video at 01:26-01:28.
4	alongside the driver's side of the vehicle, before coming to another stop.	
5	before coming to another stop.	
6	67. The vehicle did not come close to striking any officer and neither officer was in the	Ex. C, Incident Video at 01:26-01:28.
	pathway of the vehicle when it moved	
7	forward.	
8	68. Neither Bruce nor Maxwell was struck by	Ex. 1, Maxwell Dep. 39:17-21; Ex. 3, Bruce
9	the vehicle.	Dep. 30:1-4.
10	69. After Decedent moved the vehicle forward	Ex. 3, Bruce Dep. 53:9-13.
11	and then came to a stop, Bruce claims that he thought that Decedent was agitated at	
12	this point.	
	70. Bruce cannot recall whether Decedent's	Ex. 3, Bruce Dep. 31:18-25.
13	car windows were all the way up and	Ex. 5, Brace Bep. 51.10 25.
14	concedes that the window may have been down a few inches still.	
15		
16	71. After the car reversed and then moved forward, Maxwell claims he heard Bruce	Ex. 1, Maxwell Dep. 47:21-48:12.
17	say things to the driver before Bruce	
18	began to hit the window with his baton.	
	72. After coming to a stop, the vehicle began	Ex. C, Incident Video at 01:28-01:30.
19	to reverse again.	
20	The Officers Escalate the Encounter in an	n Attempt to Take Decedent into Custody
21	73. As the vehicle reversed, Bruce approached	Ex. 3, Bruce Dep. 33:3-6, 38:10-14; Ex. C,
22	the driver's side door and started to strike	Incident Video at 01:29-01:31.
23	the driver's side window with the bottom of his baton, while positioning his left foot	
24	extended forward near the front left tire.	
	74. A reasonable officer acting pursuant to	DeFoe Decl. ¶ 6.
25	standard police practices and training	"
26	would not have believed there was reasonable suspicion to detain or probable	
27	cause to arrest Ms. Hernandez at the time	
28	Officer Bruce approached the vehicle and	

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1	PLAINTIFFS' ADDITIONAL	SUPPORTING EVIDENCE
2	MATERIAL FACTS	
3	began to strike the driver's side window with his baton.	
5 6	75. Bruce's plan was to bash open the driver's side window and pull Decedent out of the vehicle.	Ex. 3, Bruce Dep. 32:15-33:2; Ex. 4, Bruce Int. 18:792-795.
7 8	76. Bruce did not make tactical plan or have any discussion with Maxwell prior to bashing the vehicle's window.	Ex. 3, Bruce Dep. 55:15-21.
9 10	77. Bruce has never been able to successfully break window while the driver was in the car and the engine was on.	Ex. 3, Bruce Dep. 35:12-23.
11 12 13 14	78. Bruce has never seen an officer successfully smash a window open and stop someone from driving while the vehicle is on, in gear, and the driver is in the vehicle.	Ex. 3, Bruce Dep. 57:14-58:4.
15 16	79. Bruce did not give the Decedent any commands or any warning that he was going strike her window with his baton prior to striking the window.	Ex. 3, Bruce Dep. 36:2-8.
17 18 19	80. Bruce never made any gestures with his hands in an attempt to communicate with Decedent that he wanted her to stop.	Ex. 3, Bruce Dep. 53:14-16.
20 21	81. Bruce made the decision to not give any commands or gestures prior to approaching to smash the window.	Ex. 3, Bruce Dep. 64:15-20.
22 23 24 25	82. Bruce claims that the reason why he did not try to give Decedent a command or gesture to let her know he wanted her to stop prior to approaching to stop her window was because he was purely focused on the task at hand.	Ex. 3, Bruce Dep. 59:14-18.
26 27	83. Bruce was unaware of whether the car was moving while he was focused on breaking the driver's side window.	Ex. 3, Bruce Dep. 38:25-39:6, 39:16-20
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1 2	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
3 4	84. Bruce anticipated that the vehicle was going to move while he was smashing the window.	Ex. 3, Bruce Dep. 53:25-54:5.
5 6 7	85. Bruce claims that if the vehicle moved forward or backward, he intended to move along with the vehicle and match its angle while continuing to smash the window.	Ex. 3, Bruce Dep. 54:6-23.
8 9 10	86. Bruce did not know where Maxwell was while he was smashing the window with his baton and was not aware of what Maxwell was doing.	Ex. 3, Bruce Dep. 54:24-55:1, 55:6-8.
11 12	87. While Bruce was striking the driver's side window, Maxwell approached the moving vehicle's left rear tire and stabbed the tire with his knife.	Ex. 3, Bruce Dep. 40:16-18, 55:15-21; Ex. C, Incident Video at 01:31-01:35.
13 14 15	88. Maxwell observed Bruce using his expandable baton to try and break the window before Maxwell got to the rear tire.	Ex. 1, Maxwell Dep. 40:19-41:7.
16 17	89. Bruce struck the vehicle's window three times with his baton.	Ex. 3, Bruce Dep. 33:10-12; Ex. C, Incident Video at 01:30-33.
18 19	90. After Bruce's third baton strike, the car reversed further, and Bruce fell to the ground near the front left tire.	Ex. C, Incident Video at 01:32-01:34.
20 21 22	91. Bruce found himself on the ground and initially did not know what had brought him off his feet.	Ex. 3, Bruce Dep. 39:21-40:5.
22 23 24	92. Bruce concedes that if he had not gone up to smash the vehicle's window, he would not have been in the position to end up where he did on the ground.	Ex. 3, Bruce Dep. 52:14-24.
252627	93. After falling to the ground, Bruce was positioned on all fours, with his arms and legs apart.	Ex. C, Incident Video at 01:34-01:38.

1 2	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
3 4 5	94. After Bruce fell to the ground, the vehicle's front left tire did not stop on top of Bruce and Bruce was not pinned underneath the vehicle.	Ex. 6, Phillips Dep. 26:25-27:13; Ex. 7, Bell Dep. 23:10-25; Ex. C, Incident Video at 01:32-10:39.
6	95. After Bruce went to the ground, he did not try to say anything to the Decedent.	Ex. 3, Bruce Dep. 45:21-23.
7	Maxwell Shoots a	nd Kills Decedent
8 9 10	96. Moments after Bruce went to the ground, Bruce looked at Maxwell and told Maxwell to shoot Decedent with his firearm.	Ex. 1, Maxwell Dep. 64:9-12; Ex. 3, Bruce Dep. 45:24-46:10
11 12	97. Bruce believed that he was directing Maxwell to shoot the Decedent.	Ex. 3, Bruce Dep. 46:17-19.
13 14 15	98. After stabbing the left rear tire twice, Maxwell turned his attention to Bruce, unholstered his firearm and pointed it at the driver's side window.	Ex. C, Incident Video at 01:35-01:37.
16 17	99. There was a gap of time from when Maxwell drew his firearm to when he engaged his firearm during which Maxwell assessed the situation.	Ex. 2, Maxwell Int. 13:598-600.
18 19 20	100. According to Maxwell, approximately three to five seconds passed between the time Maxwell got to the car window and when he began shooting.	Ex. 2, Maxwell Int. 14:612-618.
21 22	101. Maxwell discharged his firearm into the driver's side window.	Ex. C, Incident Video at 01:39.
23 24	102. The vehicle was not moving when the shooting started.	Ex. C, Incident Video at 01:38-01:42.
25 26	103. Maxwell never said anything to Decedent, including any commands to stop or a warning that he was going to shoot, prior to the shooting.	Ex. 1, Maxwell Dep. 16:19-17:6, 17:17-21, 63:12-15.
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1 2	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
3	104. Maxwell aimed at Decedent's upper left torso.	Ex. 1, Maxwell Dep. 63:16-20.
5 6	105. Maxwell was able to see Decedent in the car through the circle that was created after the first shot.	Ex. 1, Maxwell Dep. 63:24-64:4
7 8 9 10	106. Maxwell had the impression that his shots were striking Decedent in the car because he could see the initial impact as he began shooting and could see that his continued shots appeared to be striking her.	Ex. 1, Maxwell Dep. 65:14-23.
11 12	107. After the first or second shot, Decedent's head fell forward and landed on the steering wheel.	Ex. 8, Hoberg Dep. 47:9-15, 61:5-17.
13 14 15	108. After the first two shots, Decedent's head and upper body moved away from the driver's side and down towards passenger seat area.	Ex. C, Incident Video at 01:39-01:40.
16 17 18	109. After the first two shots, the car slowly moved forward in a straight line and Bruce moved away from near the front left tire.	Ex. C, Incident Video at 01:40-01:42.
19 20	110. Bruce was not in the direct pathway of the vehicle when it started to move forward.	Ex. 7, Bell Dep. 42:16-23, 44:11-45:5; Ex. C, Incident Video at 01:39-01:43.
21 22 23	111. The car never attempted to make a turn when it moved forward; it generally moved in a straight direction the entire time.	Ex. 7, Bell Dep. 49:3-15; Ex. C, Incident Video at 01:39-01:43.
24	112. When the car rolled forward, it was moving at approximately 2 miles per hour.	Ex. 7, Bell Dep. 43:2-44:1; Ex. C, Incident Video at 01:39-01:43.
252627	113. Bruce claims he heard two back-to-back shots and then felt the vehicle move off his leg.	Ex. 3, Bruce Dep. 67:1-6; Ex. 4, Bruce Int. 23:1010-1021.

1	PLAINTIFFS' ADDITIONAL	SUPPORTING EVIDENCE
$2 \parallel$	MATERIAL FACTS	
3 4	114. Maxwell fired five additional shots after the initial two shots for a total of seven shots.	Ex. 1, Maxwell Dep. 12:23-13:9; Ex. C, Incident Video at 01:39-01:41
5 6	115. Maxwell claims he would not have had to shoot if Decedent had stopped and complied with directions after driving	Ex. 2, Maxwell Int. 14:650-653
7	forward in the officers' direction.	
8	116. Maxwell claims Maxwell would not have used his firearm against Decedent had Decedent not been manipulating her	Ex. 2, Maxwell Int. 14:655-15:659
10	car or looked like she was going to comply after striking Bruce.	
11 12	117. Decedent sustained seven gunshot wounds to her body.	Ex. 9, Autopsy at 2.
13 14 15	118. One of the gunshot wounds entered her left mid-back and had a back to front, left to right, and sharply upward trajectory.	Ex. 9, Autopsy at 2.
16 17 18	119. Another gunshot wound entered the lateral left torso and had a left to right, slightly front to back, and sharply upward trajectory.	Ex. 9, Autopsy at 2.
19 20 21	120. The bullets broke Decedent's jaw and left upper arm, damaged structures in her neck, and tore through her left lung with resultant accumulation of blood in her left chest cavity.	Ex. 9, Autopsy at 3.
22 23	121. Decedent died as a result of her gunshot wounds.	Ex. 9, Autopsy at 3.
24 25	122. Bruce did not sustain any broken bones or any injury that required surgical intervention as a result of the incident.	Ex. 3, Bruce Dep. 50:4-6, 50:13-24.
26 27	123. Bruce only sustained abrasions and contusions to his left knee, right knee, and abrasions to his hands.	Ex. 5, Bruce Injury Photos.
20		

1	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
2	MATERIAL FACTS	
3	The Officers' Pre-Force Conduct and Uses and Tr	of Force Violated Standard Police Practices
$_{4}\ $		_
5	124. Based on the circumstances of this incident, a reasonable police office acting consistent with standard police practices	DeFoe Decl. ¶ 5.
6	and training would have initially	
7	determined that Decedent was mentally ill or experiencing a mental health crisis.	
8	125. Officers are trained to recognize cues	DeFoe Decl. ¶ 5.
9	and other indicators of a mental illness in	
10	order to make appropriate decisions regarding intervention strategies.	
11	126. Despite Decedent exhibiting indicators	DeFoe Decl. ¶ 5.
12	of a mental illness, including Bruce determining that Decedent was not in her	
13	right state of mind and was crazy, Bruce	
14	and Maxwell failed to initially determine	
	that Decedent was mentally ill or was experiencing a mental health crisis.	
15	-	
16	127. There was a gross lack of situational awareness and fundamental tactical errors	DeFoe Decl. ¶ 7.
17	made by Maxwell and Bruce in this incident.	
18	120 The 66 and 6 1 day 6 minutes	D.E. D. 1 #7
19	128. The officers failed to formulate a tactical plan prior to their initial approach	DeFoe Decl. ¶ 7.
20	Decedent and prior to approaching	
	Decedent to detain her.	
21	129. The poor tactical choices and errors	DeFoe Decl. ¶ 7.
22	made by the officers during this incident include failing to recognize that Decedent	
23	may have a mental illness and responding	
24	appropriately pursuant to their training,	
	failing to tactically position themselves in a position of cover and away from	
25	Decedent's vehicle when it began moving,	
26	failing to communicate with each other during the incident, positioning	
27	themselves near or in the pathway of a	
28	moving vehicle despite anticipating that	

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	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
	the vehicle would continue to move, unnecessarily escalating the situation by using force without attempting to communicate, give commands, or give warnings, and not being aware of where their partner was during the incident.	
	130. Had the officers not made such poor tactical decisions and errors, the shooting would not have happened.	DeFoe Decl. ¶ 7.
9 0 1 2 3	131. A reasonable officer acting consistent with standard police practices would have acted according to their training regarding how to deal will mentally ill persons or persons experiencing a mental crisis and would have attempted to deescalate and utilize proper defusing techniques.	DeFoe Decl. ¶ 8.
1 5	132. Bruce's use of the baton to strike the driver's side window violated standard police practices and training and unnecessarily escalated the situation.	DeFoe Decl. ¶ 9.
5 7 8 9	133. A reasonable officer acting consistent with police practices and training, confronted with the facts of this incident, would not have used lethal force in this situation.	DeFoe Decl. ¶ 10.
) 1 2 3	134. This was not an immediate defense of life situation and under the facts of this case, Maxwell could not shoot Decedent after Bruce was not under the vehicle or in a position where he or Maxwell could be struck by the vehicle.	DeFoe Decl. ¶ 10.
5 5 7	135. Officers are trained that shooting at a moving vehicle is rarely effective and the officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.	DeFoe Decl. ¶ 11; Ex. 1, Maxwell Dep. 70:14-71:1, 71:5-23, 72:12-18.

1	PLAINTIFFS' ADDITIONAL	SUPPORTING EVIDENCE
2	MATERIAL FACTS	
3	136. Officers are taught that if a driver is	DeFoe Decl. ¶ 11.
4	wounded or killed while operating a motor vehicle, it could cause the driver to lose	
5	control of the vehicle, making it more dangerous for those around the vehicle.	
6	137. Officers are trained that moving to	DeFoe Decl. ¶ 11.
7	cover, repositioning, and/or waiting for	Der de Deci. 11.
8	additional responding units to gain and maintain a superior tactical advantage may	
9	maximize officer and public safety and minimizes the necessity for using lethal	
10	force.	
11	138. Officers are trained that lethal force	DeFoe Decl. ¶ 12.
12	must be a last resort and used only in the direst of circumstances.	
13	139. Officers are further trained that they	DeFoe Decl. ¶ 12.
	must show a reverence for human life and	201 00 2001. 12.
14	to consider other reasonable measures available prior to using lethal force.	
15	140. Maxwell had other reasonable	DeFoe Decl. ¶ 12.
16	measures available to him at the time he used lethal force, including but not limited	
17	to issuing commands and warnings and	
18	moving to a position of cover.	
19	141. Officers are trained that they are responsible for justifying every shot.	DeFoe Decl. ¶ 13; Ex. 1, Maxwell Dep. 76:11-13.
20	142. Officers are also trained that	DeFoe Decl. ¶ 13.
21	subjective fear is insufficient to justify the	Der de Deel. 13.
22	use of lethal force and that an overreaction in using force is excessive force.	
23	143. The number of shots by Maxwell	DeFoe Decl. ¶ 13.
24	violated standard police practices and training as it was clear to Maxwell that his	"
25	initial shots struck Decedent, Decedent	
26	was incapacitated by the initial shots, and Bruce was able to move away from the	
27	vehicle after the initial two shots.	
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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	PLAINTIFFS' ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE	
3 4 5	144. Officers are trained to give a warning, when feasible, prior to using force in order to give the suspect the opportunity to comply and avoid the use of force.	DeFoe Decl. ¶ 14; Ex. 1, Maxwell Dep. 76:8-10.	
6 7	145. It was feasible for Bruce to provide commands or a warning prior to using his baton to strike the driver's side window but failed to do so	DeFoe Decl. ¶ 14.	
8 9 10	146. It was feasible for Maxwell to provide commands and a warning prior to his use of lethal force but failed to do so.	DeFoe Decl. ¶ 14.	
11 12 13 14	147. A reasonable officer acting pursuant to standard police practices and training would have given a warning prior to striking the driver's side window with a baton and prior to using deadly force under the circumstances of this incident.	DeFoe Decl. ¶ 14.	
15 16 17 18 19	148. The Redding Police Department Policy 300.4.1 advises officers that an officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle or if deadly force other than the vehicle is directed at the officer or others.	Ex. 1, Maxwell Dep. 80:24-81:6.	
20 21 22	149. Maxwell never saw Decedent in the car with a gun or pointing a gun at Maxwell.	Ex. 1, Maxwell Dep. 81:7-10.	
23			